

## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

WINSTON NAJEE REED,

Plaintiff,

v.

CALVIN JOHNSON, et al.,

Defendants.

Case No. 3:23-cv-00034-ART-CLB

ORDER DISMISSING AND CLOSING  
CASE

Plaintiff Winston Reed brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at High Desert State Prison. (ECF No. 1-3). On January 27, 2023, this Court ordered Reed to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before March 28, 2023. (ECF No. 3). The Court warned Reed that the action could be dismissed if he failed to file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action by that deadline. (*Id.* at 2). That deadline expired and Reed did not file a fully complete application to proceed *in forma pauperis*, pay the full \$402 filing fee, or otherwise respond.

**I. DISCUSSION**

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440–41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the

1 public's interest in expeditious resolution of litigation; (2) the Court's need to  
2 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy  
3 favoring disposition of cases on their merits; and (5) the availability of less drastic  
4 alternatives. *See In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217,  
5 1226 (9th Cir. 2006) (quoting *Malone*, 833 F.2d at 130).

6 The first two factors, the public's interest in expeditiously resolving this  
7 litigation and the Court's interest in managing its docket, weigh in favor of  
8 dismissal of Reed's claims. The third factor, risk of prejudice to defendants, also  
9 weighs in favor of dismissal because a presumption of injury arises from the  
10 occurrence of unreasonable delay in filing a pleading ordered by the court or  
11 prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.  
12 1976). The fourth factor—the public policy favoring disposition of cases on their  
13 merits—is greatly outweighed by the factors favoring dismissal.

14 The fifth factor requires the Court to consider whether less drastic  
15 alternatives can be used to correct the party's failure that brought about the  
16 Court's need to consider dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983,  
17 992 (9th Cir. 1999) (explaining that considering less drastic alternatives *before*  
18 the party has disobeyed a court order does not satisfy this factor); *accord*  
19 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002). Courts "need not  
20 exhaust every sanction short of dismissal before finally dismissing a case, but  
21 must explore possible and meaningful alternatives." *Henderson v. Duncan*, 779  
22 F.2d 1421, 1424 (9th Cir. 1986). Because this Court cannot operate without  
23 collecting reasonable fees, and litigation cannot progress without a plaintiff's  
24 compliance with the Court's orders, the only alternative is to enter a second order  
25 setting another deadline. But issuing a second order will only delay the inevitable  
26 and further squander the Court's finite resources because there is no evidence  
27 that Reed did not receive the Court's January 27, 2023, order or needs more time.

1 Setting another deadline is not a meaningful alternative given these  
2 circumstances. So the fifth factor favors dismissal.

3 **II. CONCLUSION**

4 Having thoroughly considered these dismissal factors, the Court finds that  
5 they weigh in favor of dismissal. It is therefore ordered that this action is  
6 dismissed without prejudice based on Plaintiff Winston Reed's failure to file a  
7 fully complete application to proceed *in forma pauperis* or pay the full \$402 filing  
8 fee in compliance with this Court's January 27, 2023, order. The Clerk of Court  
9 is directed to enter judgment accordingly and close this case. No other documents  
10 may be filed in this now-closed case. If Winston Reed wishes to pursue his claims,  
11 he must file a complaint in a new case and either pay the required filing fee or  
12 properly apply to proceed *in forma pauperis*.

13 It is further ordered that the motion to exceed page limits (ECF No. 1-4) is  
14 denied as moot.

15 DATED THIS 8<sup>th</sup> day of May 2023.

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18 ANNE R. TRAUM  
19 UNITED STATES DISTRICT JUDGE  
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